

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SALLY K. FAVALORO,)
)
Plaintiff,)
)
v.) No. 4:14-CV-284 CAS
)
)
BJC HEALTHCARE, et al.,)
)
)
Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on review of the file. On May 20, 2015, pro se plaintiff filed a ninety-four page document titled “First Amended Complaint” without leave of Court. For the following reasons, the Court will order the Clerk of Court to delete the document from the record.

The history of plaintiff’s amended pleadings is long, and the Court will recite only what is relevant to the instant Order. On February 18, 2014, plaintiff filed her complaint. On October 20, 2014, she amended her complaint once as a matter of course before defendants filed a response. See Fed. R. Civ. P. 15(a). This was expressly allowed by the Court. See Doc. 19. On November 3, 2014, defendants moved to strike plaintiff’s amended complaint, which the Court granted. See Doc. 40. On February 10, 2015, plaintiff attempted to amend her complaint again, but the Court denied her leave. See Doc. 53. The Court ordered defendants to respond to plaintiff’s initial complaint filed February 18, 2014. Defendants responded by filing a motion for partial dismissal. See Doc. 54. On April 30, 2015, defendants answered the claims for which they did not seek dismissal. Within 21 days of the filing of this answer, plaintiff has filed the instant “First Amended Complaint.”

Plaintiff states in her First Amended Complaint that she “has an absolute right . . . under the Federal Rules of Civil Procedure 15(a)(1)(B) to file this First Amended Complaint.” (1st Am. Compl., ¶ 2.1). Federal Rule 15(a)(1)(B) states “if the pleading is one to which a responsive pleading is required, [a party may amend its pleading once as a matter of course] 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” This Rule does not allow for serial amendments to the pleadings. As the Advisory Committee Notes explain, the 21-day periods to amend once as a matter of course after service of a responsive pleading or a motion under Rule 12 “are not cumulative.” “If a responsive pleading is served after one of the designated motions is served, for example, there is no new 21-day period.” See Fed. R. Civ. P. 15, Advisory Committee Notes, 2009 Amendments.

On November 3, 2014, defendants filed their motion to strike plaintiff’s Amended Complaint pursuant to Federal Rule of Civil Procedure 12(f). The service of this motion under Rule 12(f) began the 21-day time period during which plaintiff could move to amend once as a matter of course.¹ The 21-day period to amend the complaint once as a matter of course expired on November 24, 2014. After November 24, 2014, plaintiff may amend her pleading “only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). Plaintiff’s document titled “First Amended Complaint” was filed without leave of court and with no indication of defendants’ consent. For this reason, the Court will order the Clerk of Court to strike the First Amended Complaint from the record.

¹For purposes of this Order, the Court will not address plaintiff’s prior amendment to her Complaint, which the Court expressly allowed before defendants had filed any response to the Complaint. See Doc. 19.

The Court notes that plaintiff has not responded to defendants' motion for partial dismissal, and the time for doing so has passed. If plaintiff wishes to respond to defendants' motion for partial dismissal, she will need to seek leave of Court to file such a response out of time. Plaintiff is advised that when leave to file a document is sought, the document for which leave is required must be submitted as an attachment to the motion for leave, and should not be filed as a separate document. See Administrative Procedures for Case Management/Electronic Case Filing, § II.B. Plaintiff shall file any motion for leave to respond out of time to defendants' motion for partial dismissal by June 2, 2015, and attach to such motion her proposed response. If a motion for leave to file a response is not filed by June 2, 2015, the Court will consider defendants' motion without the benefit of any response from plaintiff.

Accordingly,

IT IS HEREBY ORDERED that the Clerk of Court shall strike from the record plaintiff's document titled "First Amended Complaint." [Doc. 60]

IT IS FURTHER ORDERED that by June 2, 2015, plaintiff shall file a motion for leave to file out of time her response to defendants' motion for partial dismissal, and shall submit as an attachment her proposed response to partial dismissal.

IT IS FURTHER ORDERED that if plaintiff does not file a motion for leave to file out of time her response to defendants' motion for partial dismissal, the Court will consider defendants' motion without the benefit of any response from plaintiff.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 22nd day of May, 2015.